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4 MERYL POMPONIO,  
5 Plaintiff,  
6 v.  
7 BEVERAGES & MORE, INC., et al.,  
8 Defendants.  
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10 Case No. [20-cv-09448-EMC](#)  
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14 **ORDER DENYING MOTION TO**  
**DECLARE PLAINTIFF A VEXATIOUS**  
**LITIGANT**

15 Docket Nos. 26, 27  
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17 Pending before the Court is Defendants Jason Zhong Wong and Judi Li Chan Wong's  
18 motion to declare plaintiff Meryl Pomponio a vexatious litigant, which is joined by Defendants  
19 Beverages & More, Inc. and Adlan, LLC. *See* Docket Nos. 26 ("Mot."); 27 ("Joiner Mot.").  
20 Although Defendants argue that Plaintiff's complaint is "harassing," they do not ask the Court to  
21 dismiss it. *See id.* In fact, Defendants' reply states that "it is clear that Plaintiff lacks standing"  
22 and therefore that "Defendants *intend to file* a motion to dismiss on that basis *as soon as possible*."  
23 *See* Docket No. 34 ("Reply") at 7 (emphasis added).

24 Defendants' motion to declare Plaintiff a vexatious litigant is **DENIED** because it is  
25 premature. Declaring Plaintiff a vexatious litigant serves no purpose unless and until Defendants  
26 successfully move to dismiss Plaintiff's complaint. *See Brooke v. Grand Hyatt SF LLC*, No. 19-  
27 CV-07630-MMC, 2020 WL 2084879, at \*2 (N.D. Cal. Apr. 30, 2020) ("[A]lthough the Court will  
28 dismiss the instant action, the Court, as noted, will afford plaintiff leave to amend, and,  
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1 frivolous or harassing.”). Accordingly, Defendants may refile this motion *if* this Court dismisses  
2 Plaintiff’s complaint in its entirety.

3 This order disposes of Docket Nos. 26 and 27.  
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5 **IT IS SO ORDERED.**  
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7 Dated: September 2, 2021  
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10 EDWARD M. CHEN  
11 United States District Judge  
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